United Nations A/55/469

General Assembly

Distr.: General
11 October 2000

Original: English

Fifty-fifth session
Agenda item 126
Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Rules and procedures to be applied for the investigation functions performed by the Office of Internal Oversight Services

Report of the Secretary-General

Summary

The present report, on the procedures followed by the Investigations Section of the Office of Internal Oversight Services, is provided in response to the request of the General Assembly in paragraph 17 of its resolution 54/244 of 23 December 1999. As is the obligation of all of the offices in the United Nations which are charged with responsibility for conducting any investigative activity, whether ongoing or ad hoc,* the Investigations Section operates in conformity with established United Nations regulations, rules and administrative instructions. The Section is, however, also subject to the provisions of the General Assembly resolutions concerning the Office of Internal Oversight Services (i.e., resolutions 48/218 B and 54/244) and the provisions of the Secretary-General's bulletin ST/SGB/273 of 7 September 1994 (together with the two General Assembly resolutions, hereinafter referred to as the mandate) and its Manual is published on the web site of the Office.

In adhering to the mandate to assist the Secretary-General in his reform programme, the Investigations Section must undertake activities with due regard for fairness and objectivity, to prevent and detect waste, misconduct, abuse and mismanagement in the operations of the United Nations. To achieve the objectives set forth in the mandate, the Section examines allegations received which involve misconduct or other prohibited activity and ascertains the facts in order to substantiate or disprove such allegations. In this regard, the Section is committed to the concept of accountability. If the evidence shows that someone has violated laws

* For example, investigations are also conducted by, among others, programme managers, by boards of inquiry, by the Office of the United Nations Security Coordinator and by joint disciplinary committees, none of which have published their own formal procedures, although they, too, operate within the rules and regulations of the United Nations (see, for example, ST/AI/371).

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or standards of ethical conduct or has been responsible for misconduct, waste, abuse or mismanagement, the Section will make recommendations to the concerned programme manager, which may include consideration of referral to a national jurisdiction for criminal prosecution and/or to the Office of Human Resources Management for consideration of disciplinary action.

With equal vigour, the Investigations Section will work to clear the name of staff members who are wrongly or incorrectly accused. In such cases, the evidence either demonstrates that the accused person has not engaged in the alleged activity or that there is insufficient evidence to support the allegation. In the latter case, the accused person must be given the benefit of the doubt. In both cases, the accused person is cleared.

In accordance with General Assembly resolutions, the Staff Rules and Staff Regulations and the mandate of the Office, investigative activities are conducted in such a way as to ensure the confidentiality of those making reports, as provided for in ST/SGB/273, the rights of the staff members involved, the protection from reprisals of those who contact the Section, and in the interests of the Organization.

The present report has been reviewed by the Office of Legal Affairs and the Department of Management, and their views incorporated.

I. Introduction

1. Based on the mandate established by the General Assembly in its resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999, as amplified by the Secretary-General's bulletin ST/SGB/273 of 7 September 1994, the Investigations Section of the Office of Internal Oversight Services is responsible for conducting investigations in a wide variety of areas. The work of the Section is necessarily grounded in the collection of evidence, with due regard for the rights of all concerned. The Section, which is not a law enforcement office, conducts investigations within the terms of its mandate. In the disciplinary processes of the Organization, the investigative activity of the Section constitutes preliminary investigation activity in accordance with administrative instruction ST/AI/371 of 2 August 1991, on revised disciplinary measures and procedures.

2. An investigation, which is a legal, analytic process, is an inquiry undertaken by specialized professionals to determine whether a wrongful or unlawful act has occurred and, if so, the person or persons responsible for the act. The findings are based on evidence which is in a form and of a sufficiency to present to a tribunal or other decision maker. Because the findings of such an inquiry must be based on evidence, it also can lead to the clearing of those who have been maliciously or simply incorrectly accused.

II. Rights and obligations of United Nations staff members

3. United Nations staff members have the right to a fair, objective investigation by the investigators of the Section, who are required at all times to conduct themselves in a professional manner and to operate in accordance with the applicable rules, regulations and procedures. The investigators are specially selected, highly skilled professionals from diverse backgrounds, with one half possessing law degrees and all, since joining the United Nations, having received additional training on the proper way in which to conduct inquiries.

4. The Investigations Section undertakes preliminary investigations within the meaning of ST/AI/371. The due process requirements enunciated in ST/AI/371 rest with the concerned programme manager who, pursuant to paragraphs 19 and 20 of ST/SGB/273, receives the findings and recommendations of the investigations, and with the Office of Human Resources Management. The Section has only recommendatory authority and cannot press charges against staff members. As a result, therefore, the standards of due process applicable to preliminary investigations are the ones which apply to investigations by the Office, such as the right of staff members to respond to allegations made against them before any report is issued.

5. The individual rights of staff members must be respected and investigations are to be conducted with regard to fairness and due process for all staff members. Staff members who come into contact with the investigators are to be treated with courtesy and are contacted only pursuant to an inquiry that has been duly authorized by the managers of the Section. Given such rights, staff members also bear obligations. Staff Regulation 1.2 (r) requires that staff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate possible misuse of funds, waste or abuse. This is further amplified by ST/SGB/273, which obliges staff members to make themselves available to the investigators and to provide them, without prior authorization, access to all records, documents or other materials, assets and premises that the investigators deem relevant in the performance of their work.

6. The cooperation of staff is essential to the success and fairness of the investigations. By assisting in investigations and bringing to the attention of the Section matters which appear to violate national law, United Nations regulations, rules and procedures, or standards of ethical conduct, staff members help to maintain public confidence in the integrity and efficiency of United Nations operations. In addition, the abuses that may be engaged in by some staff members can negatively affect their colleagues and cause harm to the United Nations programmes and goals, and their beneficiaries. Funds that are stolen, for example, are foregone insofar as United Nations projects, and staff members who are diverted by the wrongful conduct of others are less able to turn their full attention to the work of the Organization.

III. Confidentiality

7. Allegations or suggestions that are made directly to the Investigations Section are handled on a confidential basis, as mandated by paragraph 18 (b) of ST/SGB/273. The investigators are authorized to receive suggestions and allegations and are required to safeguard them from accidental, negligent or wilful disclosure. Furthermore, the investigators are to ensure that the identity of any person who has made such submissions is not disclosed, except as otherwise provided for in ST/SGB/273, or if the complainant has revealed himself or herself to others outside the Section. Because they are protected by the provisions of the mandate concerning confidentiality and retaliatory sanctions, there is no reason for those reporting to the Section to do so anonymously. Those calling or writing to the Section are not required to provide their identities under the provisions of the mandate, but they are strongly encouraged so to do in order to assist in the investigation and to forestall malicious complaints.

8. The confidentiality provisions of ST/SGB/273 which protect the identity of staff members who make reports to the Section do not apply to witnesses or to the subjects of investigation who provide information in response to the questions and inquiries of an investigator during an investigation. They are, however, protected against inappropriate disclosures.

9. Staff of the Section are bound by the provisions of confidentiality to protect the information received. Unauthorized disclosures by the staff of the Section, in particular those which reveal the identity of a staff member who has made a complaint or suggestion to the Section, would compromise the effectiveness of the Section and the trust reposed in it by the United Nations. Similarly, unauthorized disclosures of those under investigation are prohibited. Such disclosures may lead to an inappropriate and inaccurate public perception of both the concerned staff member and the Organization. Unauthorized disclosure by staff members of the Section of the suggestions and reports received constitutes misconduct, for which disciplinary measures may be imposed on the staff members concerned.

10. In addition to the protection provided for staff members in the filing of complaints, ST/SGB/273 provides for protection against subsequent reprisals. Staff members who believe that they have suffered reprisal as a result of submitting complaints or providing assistance to the Section should notify the Section of the circumstances. Retaliation against a staff member who assists the Section in carrying out its mandate may make the person responsible for such retaliation subject to appropriate action by the Organization. The decision for such action rests with the programme manager, in consultation with the Office of Human Resources Management or another designated office.

IV. Investigative process

11. Confidentiality is also ensured for staff members and others against whom allegations have been made. In order to protect those persons under inquiry, no unauthorized disclosure may be made of either their identity or the subject matter of the allegation. No findings and recommendations are reported before the subject of the inquiry has been afforded the opportunity to respond to the allegation, including provision of documents and witnesses on his or her behalf. The process for conducting investigations has been developed to ensure transparency, as well as to protect confidentiality. All investigations must be conducted pursuant to these processes so as to ensure fairness and promote professional objectivity. Further, confidentiality, properly applied, promotes trust and protects reputations.

12. Most investigations result from a reported complaint or suggestion, even though the Section is authorized to conduct investigations based on an analysis of the potential for fraud. Such investigations are conducted in response to allegations from various persons, including heads of offices, departments, funds and programmes; staff members; contractors; callers to the hotline of the Section; the General Assembly or one of its subsidiary organs; non-governmental organizations; or members of the public. After an initial assessment, all such matters are formally registered in the Section and, for each matter, an investigator is assigned. No investigator may undertake an investigation without prior formal, written approval by the management of the Section. Investigators conduct their investigations in accordance with United Nations regulations, rules and relevant administrative issuances. The role of the investigator is to examine objectively and thoroughly situations that may involve violations of the law, United Nations regulations, rules

and administrative instructions, mismanagement, abuse of authority, waste of resources and the potential areas in which fraud may be committed, as well as to review suggestions for improvements in programme delivery. An investigation may conclude with a finding, based on the available evidence, that an allegation is unsubstantiated. In other cases, an investigation may disclose activities that clearly violate national laws, or behaviour unbecoming an international civil servant. In addition, some matters may not be investigated but be referred to other offices of the Organization to which they more appropriately belong, for example, personnel grievances. For those matters investigated by the Section, proper procedures are in place both in the Manual of the Office and within the context of the internal disciplinary and administrative systems.

13. Matters are brought to the attention of the Section in a variety of ways: in person, by telephone, by fax, by email, by post. The Section operates a hotline facility in accordance with ST/SGB/273 and administrative instruction ST/AI/397 of 7 September 1994, on the reporting of inappropriate use of United Nations resources and proposals for the improvement of programme delivery. This facility provides an effective, direct channel for United Nations staff and others to report incidents of waste, fraud, abuse, mismanagement and misconduct.

14. When alerting the Section to situations that they believe warrant review, staff members and others should provide as much information as possible, including any supporting documents and other factual information that may be available to them. This will facilitate the investigative process and reduce the chance of inaccurate or incomplete reports. All allegations provided to the Section are carefully reviewed, but not all allegations lead to a full investigation. For example, management issues or administrative matters may be referred to programme managers, with a request to advise the Section of their findings.

15. Every effort is made to review reported complaints as quickly and efficiently as possible in order to protect the interests of the Organization and all concerned. Various factors may, however, affect the progress of an investigation, including the demands of higher priority cases, the availability of the resources of the Section, the availability and proximity of the parties involved, and the need to protect the identity and rights of the staff members who are making information available to the Section or who are under investigation.

16. In conducting the investigation, the assigned investigators will review and analyse documents and other material, interview witnesses and undertake such further research as may be necessary. Requests for access to records, documents or other materials, assets and premises, or interviews conducted with staff members during the course of an investigation, should not be construed as evidence of wrongdoing by any person. Rather, such requests for information are designed for the purpose of soliciting information which is pertinent in ascertaining the facts in the case.

17. At the appropriate time, the Section will advise programme managers of investigations that affect the programmes or operations under their responsibility. Because prior notification may be impractical or inappropriate, management may not receive advance information about an investigation. For example, because of the potential for damage to a staff member's reputation, unconfirmed allegations of misconduct are not disclosed until an investigation has been completed, except in cases in which withholding such information could harm programme operations. The Section does not provide status reports on investigations in progress to programme managers or interested parties unless there is a clear and compelling need to do so. As an added protection for the integrity of the investigative process and the privacy of those involved, it is the policy of the Section not to release publicly the details, or the fact itself, of an ongoing investigation or unsubstantiated allegations.

18. Thus, the Section conducts investigations according to established investigative procedures, which include reviews of relevant files and documentation and interviews with complainants, witnesses and subjects of inquiries and others, such as technical experts who, in the view of the Section, may assist in resolving the matter. Because of the global scope of United Nations responsibilities, investigations by the Section often require travel and consultations with local authorities.

19. At the conclusion of an investigation, the Section will evaluate the evidence obtained. This analysis may cause the Section to decide to close the case as unsubstantiated, based on the evidence adduced, or to proceed with the matter when the evidence supports the allegation. If the evidence has confirmed wrongdoing,

the Section will provide a report, together with the findings and recommendations, to the concerned programme managers. Similarly, if the allegation is not substantiated by the evidence, this will be reported to the programme manager and those who have been accused will be cleared.

20. The Section is a recommendatory body only and cannot take direct action to bring a case before national law enforcement authorities, institute disciplinary proceedings or take administrative measures (e.g., issue a reprimand). If such actions have been recommended upon completion of the investigation which, in accordance with ST/AI/371 is only preliminary, the programme manager has the responsibility of reviewing and responding to the Office of Internal Oversight Services under the provisions of ST/SGB/273, and consultations may follow. If the programme manager agrees with a disciplinary recommendation, the matter is forwarded by that manager to the Office of Human Resources Management for further consideration; the due process provisions of ST/AI/371 apply once the Office of Human Resources Management has decided to proceed with formal charges. If requested, the Section will assist in further reviews by the Office of Human Resources Management, boards of inquiry, joint disciplinary committees and joint appeals boards. Administrative actions also may be pursued in addition to, and independent of, criminal prosecutions. If the programme manager does not agree with the recommendation, there may be further consultations with the Office of Internal Oversight Services. If there is no agreement, the matter may be referred to the Secretary-General for resolution, under the provisions of the mandate of the Office.

21. If an investigation discloses evidence of criminal conduct, the Section may recommend to the programme manager that the matter be referred to the concerned national law enforcement authorities for prosecution, after consultation with the Office of Legal Affairs. Referrals may concern staff members, vendors and others who have sought to derive illegal benefit to the detriment of the United Nations.

22. When a case is referred to national law enforcement authorities for criminal investigation and possible prosecution, the Section, in consultation with the Office of Legal Affairs and the programme manager concerned, assumes its designated role of liaison between the United Nations and the national authorities. The Section will provide assistance as requested by relevant national authorities, keeping in view the Convention on the Privileges and Immunities of the United Nations and in close consultation with both the programme manager and the Office of Legal Affairs. Restitution is recommended in cases that involve the loss or misuse of United Nations resources.

23. If the evidence adduced by the investigation reveals that the allegation was made with knowledge of the falsity or with wilful disregard of their truth or falsity (ST/SGB/273, para. 18 (e)), the procedures of the Section require that such evidence be made known to the appropriate programme managers for the necessary action. Under the terms of ST/SGB/273, it is not sufficient that the allegation be proved to be incorrect. Rather, it is necessary for there to be evidence of mala fides on the part of the person making the report.

V. Conclusion

24. The Investigations Section operates pursuant to its mandated terms of reference and with respect for the interests of the Organization. Further guidance is provided by the Staff Rules and Staff Regulations, and administrative instructions. Direction and supervision by the Under-Secretary-General for Internal Oversight Services ensure the accountability of the work of the Section.